

**New Jersey Administrative Code**  
**Title 12 Chapter 45**  
**(Reflects Amendments Adopted 8/16/99)**

**SUBCHAPTER 1. PROCEDURES AND STANDARDS**

**12:45-1.1 Purpose and Scope**

(a) The purpose of this subchapter is to set forth the procedures, standards and criteria used by the Division of Vocational Rehabilitation Services to rehabilitate individuals with disabilities.

(b) This subchapter applies to every individual who is seeking vocational rehabilitation services through the Division of Vocational Rehabilitation Services.

(c) Nothing in this subchapter shall be inconsistent with Federal law and regulations for the basic vocational rehabilitation services program and the Division of Vocational Rehabilitation Services shall comply with such requirements codified at 29 U.S.C. §§701-744 and its implementing regulations at 34 C.F.R. 361 et seq.

**12:45-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

□Act□ means the Rehabilitation Act, 29 U.S.C. 701 et seq., as amended by the Rehabilitation Act Amendments of 1998, P.L. 102-569.

□Appropriate modes of communication□ means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, braille and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

□Assessment for determining eligibility and vocational rehabilitation needs□ means, as appropriate in each case:

1. A review of existing data:
  - i. To determine whether an individual is eligible for vocational rehabilitation services; and
  - ii. To assign the priority described in the order of selection found at N.J.A.C. 12:45-1.8;
2. To the extent additional data is necessary to make the determination and assignment in 1 above, a preliminary assessment of such data (including the provision of goods and services during such assessment);
3. To the extent additional data is necessary, a comprehensive assessment (including the administration of the assessment) of the unique strengths, resources, priorities, interests and needs,

including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature and scope of vocational rehabilitation services to be included in the individualized plan for employment (IPE) of the individual, which comprehensive assessment:

- i. Is limited to the information that is necessary to identify the rehabilitation needs of the individual and to develop the IPE of the individual;
  - ii. Uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements;
    - (1) Existing information; and
    - (2) Such information as can be provided by the family of the individual.
  - iii. May include, to the degree needed to make such a determination, an assessment of the personality, interests, inter-personal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational and environmental factors, that affect the employment and rehabilitation needs of the individual; and
  - iv. May include an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and
4. Referral for, the provision of rehabilitation technology services to an individual with a disability to assess and develop the capacities of the individual to perform in a work environment; and
  5. An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which shall be assessed periodically during trial work experiences in which the individual is provided appropriate supports and training.

“Assistive technology device” has the meaning given such term in section 3(2) of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (29 U.S.C. 2202(2)).

“Assistive technology service” has the meaning given such term in section 3(3) of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (29 U.S.C. 2202(3)).

□Community rehabilitation program□ means a program that provides directly, or facilitates the provision of, vocational rehabilitation services to individuals with disabilities and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment including career advancement:

1. Medical, psychiatric, psychological, social and vocational services that are provided under one management;
2. Testing, fitting, or training in the use of prosthetic and orthotic devices;
3. Recreational therapy;
4. Physical and occupational therapy;
5. Speech, language and hearing therapy;
6. Psychiatric, psychological and social services, including positive behavior management;

7. Assessment for determining eligibility and vocational rehabilitation needs;
8. Rehabilitation technology;
9. Job development, placement, and retention services;
10. Evaluation or control of specific disabilities;
11. Orientation and mobility services for individuals who are blind;
12. Extended employment;
13. Psychosocial rehabilitation services;
14. Supported employment services and extended services;
15. Services to family members when necessary to the vocational rehabilitation of the individual;
16. Personal assistive services; or
17. Services similar to the services described in paragraphs 1 through 16 above.

☐Competitive employment☐ means work

1. In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
2. For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

☐Disability☐ means a physical or mental impairment that constitutes or results in a substantial impediment to employment.

☐Division☐ means the Division of Vocational Rehabilitation Services (DVRS), New Jersey Department of Labor.

☐Employment outcome☐ means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market (including satisfying the vocational outcome of supported employment) or satisfying any other vocational outcome the Secretary of the U.S. Department of Education may determine consistent with the Act including satisfying the vocational outcome of self-employment, telecommuting, or business ownership.

☐Extended services☐ means ongoing support services and other appropriate services, needed to support and maintain an individual with the most significant disability in supported employment, and are provided by a State agency, a nonprofit private organization, employer, or any other appropriate resource, after an individual has made the transition from services provided by the Division.

☐Extreme medical risk☐ means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

☐Family member☐ or ☐member of the family☐ means any relative by blood or marriage of an individual with a disability and any other individual living in the same household with whom the individual with a disability has a close interpersonal relationship.

□Impartial hearing officer□ means:

1. An individual who:

- i. Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);
- ii. Is not a member of the State Rehabilitation Council created by the Governor by Executive Order;
- iii. Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or client;
- iv. Has knowledge of the delivery of vocational rehabilitation services, the State Plan and the Federal and State rules governing the provision of such services and training with respect to the performance of official duties; and
- v. Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

2. An individual shall not be considered to be an employee of a public agency for purposes of subparagraph 1i above solely because the individual is paid by the agency to serve as a hearing officer.

□Individual with a disability□ means any individual who:

1. Has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and
2. Can benefit in terms of an employment outcome from vocational rehabilitation services.

□Individual with a significant disability□ means an individual with a disability:

1. Who has a severe physical or mental impairment or combination of impairments which seriously limits one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; and
2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

□Individual with a most significant disability□ means an individual with a disability:

1. Who has a severe physical or mental impairment or combination of impairments which seriously limits two or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome ; and
2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

□Individual's representative□ means any representative chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

□Integrated setting□ means:

1. With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals

who are providing services to those applicants or eligible individuals; or

2. With respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

□Ongoing support services□ means services:

1. Needed to support and maintain an individual with a most significant disability in supported employment;

2. Identified based on a determination of the individual's needs as specified in an individualized plan for employment;

3. Furnished by the division from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

4. Including an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:

- i. At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or
- ii. If under special circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice-monthly meetings with the individual; and

5. Consisting of:

- i. A particularized assessment supplementary to the comprehensive assessment;
- ii. The provision of skilled job trainer(s) who may accompany the individual for intensive job skill training at the worksite;
- iii. Job development, job retention and placement;
- iv. Social skills training;
- v. Regular observation or supervision of the individual;
- vi. Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;
- vii. facilitation of natural supports at the worksite;
- viii. Any other vocational rehabilitation service; or
- ix. A service similar to another service described in this paragraph.

□Personal assistance services□ means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

□Rehabilitation technology□ means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

□Supported employment□ means competitive work in integrated work settings or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals for individuals with the most significant disabilities:

1. For whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and
2. Who, because of the nature and severity of their disability, need intensive supported employment services and extended services in order to perform such work. Such term includes transitional employment for persons who are individuals with the most significant disabilities due to mental illness.

□Supported employment services□ means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment, that:

1. Are provided singly or in combination and are organized and made available in such a way to assist an eligible individual in entering or maintaining integrated competitive employment;
2. Are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;
3. Are provided by the Division for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the employment outcome identified in the individualized plan for employment.
  - i. Special circumstances that would warrant consideration of an extension of services beyond 18 months may include an interruption of service during the 18 month period, significant changes in either job functions or supervision during the 18 month period or any other special circumstances providing there is reason to believe that an extension would allow the eligible individual to achieve the employment outcome identified in the individualized plan for employment; and
4. Are provided following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

□Transition services□ means a coordinated set of activities for a student designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the accomplishment of the employment outcome identified in the student's IPE. Transition services include technical consultation

provided by DVRS for students beginning at the age of 14. See N.J.A.C. 6A:14-3.7(c)(9) and 6A:14-3.7(d)(9).

### **12:45-1.3 Processing Applications and Referrals**

(a) Each individual seeking vocational rehabilitation services shall complete an application which can be obtained from any local Division office. If the individual is a referral, the person or agency making the referral may complete the application on behalf of the individual. If the individual is incapable of completing an application, the individual's parent, guardian or representative may complete the application. The Division shall make a good faith effort to advise all applicants through appropriate modes of communication of the Division's application and eligibility requirements.

(b) Each individual or representative shall submit the application and any available medical or psychiatric records relating to disability to the nearest Division office.

(c) Upon reviewing the application, a Division counselor shall arrange an appointment for the individual at the nearest local Division office. If the individual cannot travel, the counselor may visit the individual.

(d) Each individual seeking or referred for vocational rehabilitation services shall be scheduled for an intake interview as soon as possible, but no longer than fourteen days after contacting the agency.

(e) If the information received from an individual or his or her representative indicates legal blindness (N.J.S.A. 30:6-18(a)), visual impairment (N.J.S.A. 30:6-18(c)) or demonstrates other indications of possible eligibility for services provided by the New Jersey Commission for the Blind and Visually Impaired, as outlined in the Agreement of Cooperation between the Division and the New Jersey Commission for the Blind and Visually Impaired, that individual shall be referred to the New Jersey Commission for the Blind and Visually Impaired for vocational rehabilitation and other services.

(f) The counselor shall determine eligibility within a reasonable period of time, not to exceed 60 days after the individual has submitted an application to receive services, unless the counselor notifies the individual that exceptional and unforeseen circumstances beyond the control of the Division preclude it from completing the determination within the prescribed time, and:

1. The individual agrees that an extension of time is warranted; or
2. The Division is exploring the individual's abilities, capabilities and capacity to perform in work situations under 1.7(b).

### **12:45-1.4 Eligibility for Vocational Rehabilitation Services**

(a) An individual shall be eligible for vocational rehabilitation services if the counselor determines that the following exists:

1. A physical or mental impairment which for the individual constitutes or results in a substantial impediment to employment; and
2. A need for vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities and informed choice.

(b) Each counselor shall apply the eligibility requirements without regard to sex, race, age, creed, color, or national origin of the individual applying for service.

(c) No group of individuals shall be excluded or found ineligible solely on the basis of the type of disability.

(d) No residence requirement, durational or other, shall be established which excludes from services any

individual who is present in the State.

(e) Each counselor shall advise his or her client, at least once annually, of the prohibitions against discrimination set forth in (b) above.

#### **12:45-1.5 Preliminary Assessment**

(a) A preliminary assessment based upon the review of existing data shall be conducted to determine whether an individual is eligible for vocational rehabilitation services and to assign the priority category for the order of selection for services pursuant to N.J.A.C. 12:45-1.8.

(b) To the extent additional data is necessary to make such determination and assignment, such data will be secured by the counselor.

#### **12:45-1.6 Comprehensive Assessment**

(a) A comprehensive assessment of the unique strengths, resources, priorities, interest, and needs, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment of the individual will be conducted. The comprehensive assessment:

1. Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the rehabilitation program of the individual;

2. Uses, as the primary source of such information to the maximum extent possible and appropriate and in accordance with confidentiality requirements:

i. Existing information; and

ii. Such information as can be provided by the individual and where appropriate, by the family of the individual;

3. May include, to the degree needed to make such a determination, an assessment of the personality, interest, interpersonal skills, intelligence, related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments of and employment opportunities for the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual;

4. May include an appraisal of the patterns of work behavior of the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance including the utilization of work in real job situations to assess and develop the capacities of the individuals to perform adequately in a work environment; and

5. May provide rehabilitation technology services, where appropriate, to an individual with a disability to assess and develop the capacities of the individual to perform in a work environment.

#### **12:45-1.7 Certification: Eligibility; Ineligibility**

(a) Before or at the same time that an individual with a disability is accepted for vocational rehabilitation services, there shall be a certification by the counselor that the individual has met the basic eligibility requirements as set forth at N.J.A.C. 12:45-1.4.

1. The certification of eligibility shall be dated and signed by the counselor.

(b) Whenever the counselor determines on the basis of clear and convincing evidence that an applicant or



recipient of vocational rehabilitation is ineligible for services, the counselor shall sign and date a certification. In cases where it appears that an ineligibility decision will be reached because of the significance of the disability of an individual not yet determined to be eligible, the counselor shall first explore the individual's abilities, capabilities and capacity to perform in work situations, through the use of trial work experiences, with appropriate supports provided through the Division, except under limited circumstances when an individual cannot take advantage of such experiences. Such experience shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the significance of the disability of the individual.

1. The certification shall contain the following:

- i. The reasons for the ineligibility determination;
- ii. A statement that the determination is made only after full consultation with the individual or, as appropriate, the individual's parent guardian, or other representative, or after giving a clear opportunity for this consultation; and
- iii. A detailed explanation of the availability of the resources within a client assistance project established under section 112 of the Act, and a statement that referral is made to other agencies and facilities, including when appropriate, the State's independent living program.

2. Applicants shall be informed in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination including the reasons for that determination, and the means by which they may express and seek remedy for any dissatisfaction.

(c) The ineligibility determination shall be reviewed within 12 months and annually thereafter, if requested by the individual, or if appropriate, by the individual's representative, if the determination was based on a finding that the individual was incapable of achieving an employment outcome.

1. A review of an ineligibility determination shall not be conducted in situations where the individual has refused the review, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(d) The counselor may close a case without any determination of eligibility when an applicant is unavailable during an extended period of time to complete an assessment and the counselor has made repeated efforts to contact the individual and to encourage his or her participation.

## **12:45-1.8 Order of Selection for Services**

(a) In the event a shortage of funds precludes the provision of services to all eligible clients, the Director shall invoke an order of selection.

(b) After documentation of eligibility and execution of Certification of Eligibility, the following priorities will be followed according to the Director's determination of how many priorities can be served. The order of selection is as follows:

1. Clients classified as individuals with a most significant disability;
2. Clients classified as individuals with a significant disability; and
3. All other eligible clients.

(c) If the Division cannot serve every individual within the designated priority group due to the amount of available funds, then the Division will provide services to clients in the order in which they applied for

services.

Example: If all individuals with a most significant disability in priority 1 cannot be served due to lack of available funds, then services will be provided to those clients determined to be priority 1, in the order in which they applied for services.

(d) When imposed, the order of selection shall not preclude:

1. Diagnostics necessary to establish a client's eligibility; and
2. Post-employment services.

## **12:45-1.9 Case Record for the Individual**

(a) Each counselor shall maintain for each applicant for, and recipient of, vocational rehabilitation services a case record which shall include, to the extent pertinent, the following information:

1. Documentation concerning the preliminary assessment supporting the determination of eligibility, the need for trial work experiences, and, as appropriate, documentation concerning the comprehensive assessment supporting the nature and scope of vocational rehabilitation services to be provided;

2. In the case of an individual who has applied for vocational rehabilitation services and has been determined to be ineligible, documentation specifying the reasons for the ineligibility determination, and noting a review of the ineligibility determination carried out not later than 12 months after the determination was made;

3. Documentation supporting any determination that the individual has a significant disability or a most significant disability;

4. Documentation as to periodic assessment of the individual trial work experiences;

5. An individualized plan for employment and any amendments to the program;

6. In the event that physical and mental restoration services are provided, documentation supporting the determination that the clinical status of the individual with a disability is stable or slowly progressive unless the individual is being provided trial work experiences;

7. Documentation supporting any decision to provide services to family members;

8. Documentation relating to the participation by the individual with a disability in the cost of vocational rehabilitation services if the State unit elects to condition the provision of services on the financial need of the individual;

9. Documentation relating to the eligibility of the individual for any similar benefits, and the use of any similar benefits;

10. Documentation that the individual has been advised of the confidentiality of all information pertaining to his or her case, and documentation and other material concerning any information released about the individual with a disability with his or her written consent;

11. Documentation supporting the development of the Individualized Plan for Employment (IPE);

12. In the event that an individual's IPE provides for services or a job placement in a non-integrated setting, a justification for that non-integrated setting;

13. Documentation of the periodic reviews and evaluations of progress toward achieving the employment outcome;

14. In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employers for the same or similar work performed by non-disabled individuals;

15. Documentation of any plans to provide post-employment services after the employment objective has been achieved, the basis on which these plans were developed, and a description of the services provided and the outcomes achieved; and

16. Documentation concerning any action and decision involving the individual's request for review of rehabilitation counselor or coordinator determinations.

#### **12:45-1.10 Individualized Plan for Employment: Procedures**

(a) When a counselor determines that an individual is eligible for vocational rehabilitation services the Division shall complete the assessment, as appropriate, and shall provide the eligible individual or the individual's representative, in writing and in an appropriate mode of communication, with information on the individual's options for developing an individualized plan for employment, including:

1. Information on the availability of assistance, to the extent determined to be appropriate by the eligible individual, from a qualified vocational rehabilitation counselor in developing all or part of the individualized plan for employment for the individual, and the availability of technical assistance in developing all or part of the individualized plan for employment for the individual;

2. Description of the full range of components that shall be included in an individualized plan or employment; and

3. As appropriate:

- i. an explanation of Division guidelines and criteria associated with financial commitments concerning an individualized plan for employment;
- ii. additional information the eligible individual requests or the Division determines to be necessary; and
- iii. individualized plan for employment.

(b) An individualized plan for employment shall be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational rehabilitation services to be provided under the plan, the entity that will provide the vocational rehabilitation services, and the methods used to procure the services.

(c) The counselor shall monitor the individualized plan for employment to assure that services are being provided in accord with the written plan.

(d) The counselor shall provide a copy of the written plan and any amendments to the client or his or her parent, guardian or other representative including other suitable professional and informed advisors at the IPE conference or within 10 days of the plan's joint development.

(e) The counselor shall inform the individual of all the requirements affecting the development, initiation and review of the individualized plan for employment, including the availability of appropriate modes of communication.

(f) In developing an IPE for a student with a disability who is receiving special education services, the counselor shall consider the student's Individualized Education Program (IEP).

(g) The counselor shall review the individualized plan for employment as often as necessary but at least on an annual basis.

1. Each individual with a disability or, as appropriate, that individual's parent, guardian, or other representative, shall be given an opportunity to review the plan and, if necessary, jointly redevelop, and agree to its terms.

#### **12:45-1.11 Contents of the Individualized Plan for Employment (IPE)**

(a) The individualized plan for employment (IPE) must contain the consumer's name and social security number, along with a statement that he or she has been found eligible for vocational rehabilitation services or that the IPE is an amendment to an earlier plan. Each IPE shall include statements concerning:

1. A description of the employment outcome of the eligible individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
2. The specific vocational rehabilitation services to be provided, and the projected dates for the initiation of each service and the projected timeframe for the achievement of the individual's employment outcome;
3. If appropriate, the specific rehabilitation technology needed to achieve the employment outcome;
4. If appropriate, the specific on-the-job and related personal assistance services to be provided to the client, and, if appropriate and desired by the individual, the training in managing, supervising, and directing personal assistance services needed to achieve the employment outcome;
5. An assessment of the expected need for post-employment services and, if appropriate, an assessment of the need for extended services;
6. At the time of successful closure, the IPE must reassess the need for post-employment services and, if appropriate, the need for extended services, including a statement detailing how such services shall be provided or arranged through cooperative agreements with other service providers;
7. The objective criteria to evaluate progress toward achievement of the employment outcome;
8. The terms and conditions under which the goods and services described in the IPE will be provided to the individual in the most integrated setting, consistent with the informed choice of the individual, and the identity of the entity or entities that will provide the vocational rehabilitation services and the process used to provide or procure such services;
9. The consideration given to the availability of comparable benefits (similar benefits) to the client or to members of the client's family under any program to meet, in whole or in part, the cost of any vocational rehabilitation services;
10. The responsibilities of the individual in implementing the individualized plan for employment and the extent of client participation in the cost of services, if any;
11. An assurance that the individual has been informed of that individual's rights and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review and fair hearing and the right to pursue mediation of rehabilitation counselor or coordinator determinations;
12. An assurance that the individual has been provided a description of the availability of a client assistance program established under section 112 of the Act;
13. The basis on which the individual has been determined to be rehabilitated;
14. If necessary, an amendment specifying the reasons that an individual for whom a program has been prepared is no longer eligible for vocational rehabilitation and the rights and remedies available to such an individual; and
15. The coordination of services for students with disabilities who are receiving special education services with the Individualized Education Program (IEP).

(b) Each individualized plan for employment shall also contain, for individuals with the most significant disabilities for whom an employment outcome of supported employment has been determined to be appropriate:

1. A description of the time-limited services to be provided by the State; and

2. A description of the extended services needed and an identification of the source of extended services, which may include natural supports, or to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, a statement describing the basis for concluding that there is a reasonable expectation that such sources will become available.

#### **12:45-1.12 Vocational Rehabilitation Services**

(a) Vocational rehabilitation services are any goods or services necessary to render an individual with a disability employable, including, but not limited to, the following:

1. An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;
2. Counseling, guidance, and work-related placement services for individuals with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and follow-up, follow-along, and specific post-employment services necessary to assist such individuals to maintain, regain, or advance in employment;
3. Vocational and other training services for individuals with disabilities, which shall include personal and vocational adjustment, books, or other training materials, and such services to the families of such individuals as are necessary to the adjustment or rehabilitation of such individuals, except that no training services in institutions of higher education shall be paid for unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training;
4. Physical and mental restoration services, including but not limited to:
  - i. Corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes an impediment to employment, but is of such nature that such correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;
  - ii. Necessary hospitalization in connection with surgery or treatment;
  - iii. Prosthetic and orthotic devices;
  - iv. Diagnosis and treatment for mental and emotional disorders by qualified personnel in accordance with State licensure laws; and
  - v. Eyeglasses and visual services, including visual training and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, and other special visual aids, prescribed by personnel that are qualified in accordance with State licensure laws;
5. Maintenance for additional costs incurred while participating in rehabilitation services;
6. Interpreter services for individuals who are deaf;
7. Occupational licenses, tools, equipment, and initial stocks and supplies;
8. Transportation, including adequate training in the use of public transportation vehicles and systems in connection with the rendering of any vocational rehabilitation service after:
  - i. All transportation options are explored; and
  - ii. The most reasonable transportation service (excluding purchase or lease of a vehicle which will not be considered) meeting the consumer's need is identified;
9. Telecommunications, sensory, and other technological aids and devices;
10. Rehabilitation technology services;
11. Referral and other services designed to assist individuals with disabilities in securing needed

services from other agencies;

12. Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives;

13. On-the-job or other related personal assistance services provided while an individual with a disability is receiving vocational rehabilitation services in this section;

14. Supported employment services;

15. Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; and

16. Other goods and services that can reasonably be expected to benefit an individual with disability in terms of an employment outcome.

(b) Vocational rehabilitation services, when provided for the benefit of groups of individuals, may also include the following:

1. The establishment, development or improvement of community rehabilitation programs, including, under special circumstances as described at 34 C.F.R. 361.49, the construction of a facility, and the provision of other services (including services offered at community rehabilitation programs) which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized plan for employment of any one individual with a disability. Such programs shall be used to provide services that promote integration and competitive employment.

2. Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and that are seeking to employ individuals with disabilities.

3. Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities including employment.

#### **12:45-1.13 Individuals Determined to be Rehabilitated**

(a) Individuals will be determined to have been rehabilitated, only if the following requirements are met:

1. The provision of services under the individual's IPE has contributed to the achievement of the employment outcome;

2. The employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

3. The employment outcome is in the most integrated setting possible, consistent with the individual's informed choice;

4. The individual has maintained the employment outcome for a period of at least 90 days; and

5. At the end of a minimum of 90 days employment, the individual and the rehabilitation counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

#### **12:45-1.14 Participation by Clients in the Cost of Vocational Rehabilitation Services**

(a) The Division shall conduct a financial needs assessment for each client prior to or at the Individualized Plan for Employment (IPE) conference to establish how much financial participation, if any, a client will

provide toward the cost of services. This needs assessment will include the income and liquid assets of the family unit within which the client resides. The needs assessment shall be conducted as set forth below to ensure that equitable treatment is accorded to all clients in similar circumstances.

(b) The Division shall inform each client that the agency reserves the right to request verification of the current financial situation of the client and his or her family unit. "Family unit" means the individual and spouse and their dependent children residing in the same household and parents and their dependent children in the case where the individual is less than 22 years of age and residing at home with his or her parents. An individual under 22 years of age living outside the home will be considered to be living at home if the living expenses are paid for by the parents. For example, in a case where the individual is living outside the home in a school setting. Living expenses paid by the parents refers to those costs which an individual must incur to live (that is, food, lodging, utilities, etc.).

(c) Prior to or at the time of the IPE conference, the Division may require each client to submit a signed copy of the most recent New Jersey or Federal income tax return forms (including family member's forms where they did not file jointly) and other supporting documentation such as pay stubs or check stubs from benefits.

(d) Each client who is 22 years of age or older on January 1, of the year that services are scheduled to commence and living in his or her parents' home, shall have only his or her own and spouse's income considered in the financial participation calculation. For clients not yet 22 years and living with parents, both the client's and spouse's or parents' income from all sources will be considered. The client's receipt of social security or whether client is claimed as an exemption on the parents' tax return will have no bearing.

(e) Each client shall provide the following information on form DVR-17 "Financial Need Assessment," prior to the IPE conference:

1. Name, social security number and date;
2. Number of dependents in the family including the client;
3. Liquid assets of the family;
4. Family gross income;
5. Extraordinary medical expenses of the family;
6. Disability related expenses of the client and family unit;
7. Medical insurance of the client; and
8. A signed certification that the information provided on DVR-17 is true.

(f) The Division may require the client to provide additional supporting data to verify the information on the DVR-17.

(g) Each client must submit a revised DVR-17 annually, any time there is a significant change in family unit financial status, or when a request for post-employment services is made.

(h) Immediately upon receipt of a completed DVR-17, the Division shall review the form and calculate the amount of financial participation for which the client will be responsible. The amount of required financial participation shall be calculated as follows:

1. The total amount of weekly expenses directly attributable to the disability, as calculated on the DVR-17, shall be subtracted from the amount of excess weekly income reported by the client. "Excess weekly income" means the weekly gross income of the family unit minus the weekly income allowance set forth in (i) below, plus the liquid assets reported by the family unit minus the liquid asset allowance set forth in (i) below. "Liquid asset" means any cash or cash equivalents that can be converted to cash within a reasonable length of time, the unencumbered value of which shall be greater than the amounts established

by (i) below.

2. The individual shall contribute an amount equal to the "excess weekly income" each week for the duration of the service. In cases where the goods or services being provided are a total cost item, the client shall contribute an amount equal to 10 times the amount of excess weekly income. "Total cost of goods or services" means, but is not limited to, wheelchairs, hearing aids and other assistive devices. The formula as set forth above shall be applied as follows:

- i. If, after calculating the amount of client participation, the figure is greater than the cost of the item, then the client must pay for the entire cost of the item.
- ii. If, after calculating the amount of client participation, the figure is less than the cost of the item, then DVRS will pay the difference between the total cost of the item and the amount of client participation.

3. The Division may waive financial participation if the client has extraordinary medical/disability, disability related expenses or other unusual circumstances which significantly effect the quality of family life which would preclude his or her participation in the cost of services.

(i). Allowable income and liquid assets shall be as follows:

<u>Number in family</u>	<u>Annual income</u>	<u>Weekly income</u>	<u>Liquid asset allowance</u>
1	\$24,557	\$ 472	\$20,000
2	41,915	806	22,000
3	47,945	922	24,000
4	54,206	1,042	26,000
5	59,406	1,142	28,000
6	64,606	1,242	30,000
7	69,906	1,342	32,000
8	75,006	1,442	34,000
Each additional	\$ 5,200	\$ 100	\$ 2,000

These allowances will be amended periodically as deemed necessary by the Director of the Division of Vocational Rehabilitation Services.

(j) The following services shall not be based on economic need:

1. Assessments for determining eligibility, priority for services and vocational rehabilitation needs;
2. Counseling, guidance and referral services;
3. Placement;
4. On-the-job training,
5. Supported employment;
6. Work adjustment training, and
7. Job coaching.

#### **12:45-1.15 Protection; Use and Release of Personal Information**

(a) All personal information in the possession of the Division shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies which do not have



official responsibility for administration of the program. In the administration of the program, the Division may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under (d), (e), and (f) below.

(b) The Division shall inform through appropriate modes of communication each applicant, client, representative of an applicant or client, and, as appropriate, service provider, cooperating agency, and interested person of the confidentiality of personal information and the conditions for accessing and releasing this information.

(c) The Division shall provide individuals who are unable to communicate in English or who rely on special modes of communication with explanations about State policies and procedures affecting personal information through methods that can be adequately understood by them.

(d) The requirements for the release of information to an involved individual are set forth below.

#### Involved

individual means an individual for whom the Division has a case record (see N.J.A.C. 12:45-1.9).

1. When requested in writing by the involved individual or his or her representative, the Division shall make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but shall be provided through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information shall be released to the court-appointed representative.

2. When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.

3. An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the Division amend the information. If the information is not amended, the request for an amendment shall be documented in the record of services.

(e) The requirements for release of information for audit, evaluation, and research are as follows:

1. Personal information may be released to an organization, agency or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for individuals with disabilities, and only if the organization, agency, or individual assures that:

- i. The information will be used only for the purposes for which it is being provided;
- ii. The information will be released only to persons officially connected with the audit, evaluation or research;
- iii. The information will not be released to the involved individual;
- iv. The information will be managed to safeguard confidentiality; and
- v. The final product will not reveal any personal identifying information without the informed written consent of the involved individual, or his or her representative.

(f) The requirements for release of information to other programs or authorities is as follows:

1. Upon receiving the informed written consent of the individual, the Division may release to another agency or organization for its program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the Division believes may be harmful to the individual may be released when the other

agency or organization assures the State unit that the information will be used only for the purposes for which it is being provided and will not be further released to the involved individual;

2. The Division shall release personal information if required by Federal or State law;

3. The Division shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse (except where expressly prohibited by Federal or State laws or regulations), and in response to judicial order; and

4. The Division may also release personal information in a medical emergency or in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others (except where expressly prohibited by Federal or State laws or regulations).

#### **12:45-1.16 Appeal of Vocational Rehabilitation Decision by Applicant or Recipient**

(a) All applicants/clients for vocational rehabilitation services and, as appropriate, their representatives shall be advised through appropriate modes of communication of their right to request an administrative review, mediation and/or a fair hearing in the event that they are dissatisfied with any determination with regard to the furnishing or denial of vocational rehabilitation services.

1. An administrative review, mediation and/or a fair hearing must be requested in writing by the applicant, client or individual's representative. This written request should be submitted to the Director, Division of Vocational Rehabilitation Services.

2. Administrative reviews shall be held before a Division administrator within 14 days of the request by the applicant or client for a review and shall be conducted in accordance with this section. The 14-day time period may be extended for a reasonable time upon request of the applicant, client, or individual's representative.

3. Within ten days of receiving a request for mediation, the Division shall notify the applicant or client whether it agrees to participate in voluntary mediation. If it agrees to participate in mediation, the Division shall notify the applicant or client that it has forwarded the request to the Public Defender's Office of Dispute Settlement. The Public Defender's Office of Dispute Settlement shall conduct a mediation session within twenty days of receiving the request for mediation. The Public Defender's Office of Dispute Settlement shall schedule the mediation session.

4. Fair hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et.seq. and the Uniform Administrative Rules, N.J.A.C. 1:1, and Federal regulations. See N.J.A.C. 1:12C.

5. The review or mediation session shall be held at a time and place convenient for the applicant or client.

6. The applicant or client will be notified of the date, time and place of the review. The notification will be sent in advance of the review and provide enough time for the applicant or client to prepare for the review.

7. The applicant or client may be represented by counsel, friend, Client Assistance Program located in New Jersey Protection and Advocacy, Inc., parent, guardian, self, or other representative. All correspondence, decisions, or scheduling of an administrative review or mediation session or other documents sent to the client, which are related to the appeal will be copied and sent to the representative.

8. The applicant or client and his or her representative, if he or she desires to have one, will be given an adequate opportunity for cross examination and to present evidence and/or witnesses on his or her behalf during the review and an opportunity to submit evidence and information at the mediation session.

9. The Division administrator shall render a decision in writing and provide a full written report of his or her findings and the grounds for the decision to the client or his or her representative and to the DVRS Director within 30 days of the completion of the review.

10. The decision of the Division administrator shall be deemed final unless the applicant or client requests mediation and/or a fair hearing in accordance with (a)1 above.

11. The Office of Dispute Settlement shall oversee and manage the mediation process. This shall include providing qualified and impartial mediators whose selection and conduct is guided by the "Model Standards of Conduct for Mediators" approved by the American Arbitration Association, the Litigation Section and the Dispute Resolution Section of the American Bar Association, and the Society of Professionals in Dispute Resolution.

12. The role of the mediator is to:

- i. Facilitate the exchange of information pertinent to the mediation session;
- ii. Help the parties define the issues and identify options;
- iii. Facilitate communication between the parties in an impartial manner;
- iv. Assist the parties in reaching a voluntary agreement;
- v. Adjourn the mediation at the request of the parties to obtain additional information or explore options; and
- vi. Terminate mediation if in the mediator's judgment the parties are not making progress toward resolving the issue(s) in dispute.

13. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement and signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made.

14. Discussions that occur during the mediation process whether in joint session or in separate meetings, shall be confidential and shall not be used as evidence in any subsequent due process hearings or civil proceedings.

15. The mediator shall not be called as a witness in any subsequent proceeding to testify regarding any information gained during the course of mediation.

16. Mediation is a voluntary process in which a mediator, an impartial third party, facilitates problem-solving discussions in order to assist the parties to a dispute in reaching agreement. The mediator acts as neither a judge nor an advocate. He does not decide which party is at fault, nor does he determine the manner in which the dispute should be resolved.